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No. . . .
IN THE

Supreme Court of the United States

October Term, 1981

JOSEPH MICHAEL RICE, JR.,

Petitioner,

vs.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

PETITION FOR WRIT OF CERTIORARI.

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Question Presented.

As part of the legislation controlling and regulating savings and loan associations within its boundaries, California authorized individuals, called "agents," to solicit and receive loan applications on behalf of an association. Under California law, agents can receive commissions based on procuring or attempting to procure loans, while officers, directors, or employees of an association can not receive such commissions. In addition, the Federal Home Loan Bank Board provides, in its regulations, that agents can accept loan procurement commissions. Petitioner has been convicted of violating 18 U.S.C. §1006, in that, while acting as an agent for a state-chartered savings and loan association, he received loan procurement commissions from three borrowers. In a matter of first impression, the Court of Appeals construed 18 U.S.C. §1006 broadly and found petitioner was "connected in any capacity with" the association. The question presented is:

> Whether the phrase in 18 U.S.C. §1006 "connected in any capacity with" applies to an individual who is not an employee of the financial institution, thereby prohibiting receipt by such individual of loan procurement commissions.

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UNITED STATES OF AMERICA,

Respondent.

PETITION FOR WRIT OF CERTIORARI.

Petitioner Joseph Michael Rice, Jr., respectfully prays that a writ of certiorari be issued to review the judgment and opinion of the United States Court of Appeals for the Ninth Circuit entered in this proceeding on May 18, 1981. That decision affirmed a judgment entered in the United States District Court for the Central District of California finding petitioner guilty, in three counts, of violating 18 U.S.C. §1006; the Court of Appeals did vacate the sentence imposed by the District Court and remanded the matter for resentencing.

Opinion Below.

The decision of the Court of Appeals of which petitioner seeks review is reported at 645 F.2d 461; a copy is appended hereto as Appendix A.

Jurisdiction.

The Court of Appeals' decision was entered on May 18, 1981. This petition is being filed within 60 days of that date. This Court has jurisdiction to review the decision by writ of certiorari pursuant to 28 U.S.C. §1254(1).

Statutes Involved.

The statutes involved are:

1. 18 U.S.C. §1006, reproduced in full in Appendix B.
2. 12 CFR §561.29, reproduced in full in Appendix C.
3. 12 CFR §563.40, reproduced in full in Appendix D.
4. California Financial Code §5053 (West, 1968), reproduced in full in Appendix E.
5. California Financial Code §5054 (West, 1968), reproduced in full in Appendix F.
6. California Financial Code §5605 (West, Supp., 1981), reproduced in full in Appendix G.
7. California Financial Code §5607 (West, Supp., 1981), reproduced in full in Appendix H.

Statement of the Case.

In May, 1976, Rice began working for Allstate Savings and Loan Association ("Allstate"). Under the terms of the written employment contract, Rice would originate loans secured by a first mortgage on real property. The contract provided that after 60 days Rice's compensation would be commissions based on the dollar value of loans he had originated.

Although referred to as a "consultant" in the employment contract, under California law Rice was an "agent"[1] for Allstate, (Calif.Fin.C. §5053, App. E), and was licensed

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[1]Because of the terminology used in the contract and the statute, the term "consultant/agent" will be used throughout the remainder of this Petition.

by the California Savings and Loan Commissioner, (Calif.Fin.C. §§6200-6201).[2]

As a consultant/agent for Allstate, Rice would assemble specified data and financial information regarding the potential borrower and the real property which was to be used as security for the loan. This information would be submitted by Rice to Allstate, where it would be checked and verified by Allstate employees. The information regarding the proposed loan would then be submitted to Allstate's loan committee for approval or rejection. Rice was never a member of this committee. Moreover, Allstate's employment contract expressly provided that a consultant/agent, like Rice, could not bind Allstate in any way, including compelling Allstate to make a particular loan. Allstate expressly reserved to itself the sole discretion of whether to make a particular loan.

Thus, Rice was an independent consultant/agent for Allstate whose job it was to originate potential borrowers for the financial institution, but Rice had no authority to compel the association to make a loan, nor did he have any input as to whether the loan should be made.

In the summer of 1977, Rice decided to begin working for borrowers to make complex deals lendable; that is, Rice intended to use his financial knowledge to structure complex or unusual transactions so that the chances for obtaining financing would be maximized. The work performed by Rice would be beyond that required of him as a consultant/agent for Allstate; hence, Rice proposed to charge the borrowers a fee for his services, approximately one and one-

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[2]First enacted in 1931, these two statutes were in effect during the time period covered by the indictment, but were part of a chapter which was repealed effective January 1, 1979. See, Stats. 1978, c. 476, p. 1598, §8.

half percent of the face amount of any loan obtained. All loans would be placed through Allstate and if that institution declined to make the loan, the fee would be refunded by Rice. As part of his plans to assist borrowers, Rice used the name of a fictitious entity, "Alltrust."

Before embarking on his new endeavor, however, Rice discussed his plan with his direct superior at Allstate, Other than stating all loans should be placed with Allstate, Rice's superior offered no objections to Rice doing outside work for borrowers.

Thereafter, from August, 1977 through December, 1977, Rice did outside work for two different borrowers on three different loan transactions. In each instance Rice was paid a fee by the borrower, except that on the third transaction the fee was repaid because the loan was never made. In addition, Rice received only one commission from Allstate in connection with these three transactions.[3]

In July, 1980, Rice was charged, in a three-count indictment, with violating 18 U.S.C. §1006, in that he illegally profited in connection with the three loan transactions mentioned above. Except in specifying a different loan transaction, the language of each count was identical.

Summarizing, the indictment charged that Rice was "connected with" Allstate and that with intent to defraud that institution, Rice received money (*i.e.*, a loan procurement commission), from the borrowers in connection with the three transactions. The indictment did not allege that Rice was "an officer, agent, or employee" of Allstate, but, rather, was "connected in any capacity with" that institution. Nor were there any allegations that the material submitted to Allstate by Rice was false or fraudulent. Finally,

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[3]In 1977, Rice placed over 270 loans with Allstate, so these three loans represented a small percentage of Rice's work for Allstate.

since Allstate is a state-chartered savings and loan association, federal jurisdiction was premised on the basis that Allstate's deposits were insured by the Federal Deposit Insurance Corporation ("FSLIC").

In the District Court, Rice urged that the indictment should be dismissed since in his role as a consultant/agent, Rice was not "connected in any capacity with" Allstate. The District Court denied the motion and the case proceeded to trial. Rice was convicted by a jury on all three counts and the District Court denied post-trial motions for a judgment of acquittal and a new trial.

As to each count, the District Court sentenced Rice to three years in custody, but suspended imposition of that sentence and placed Rice on probation for five years on various terms and conditions, including that he spend six months in a jail-type institution and devote fifteen hundred hours to community service. The sentence on each count was to be consecutive, not concurrent, making the combined sentence eighteen months in custody, fifteen years probation and forty-five hundred hours of community service.

Rice appealed to the Ninth Circuit Court of Appeals[4] urging for distinct points: (1) Rice, as a consultant/agent for Allstate, was not "connected in any capacity with" that institution; (2) the District Court unfairly restricted Rice's ability to examine witnesses and present evidence; (3) count three failed to state an offense since a loan was never made; and (4) the sentence was illegal since it imposed more than five years probation.

In an opinion issued May 18, 1981, a panel of the Ninth Circuit affirmed Rice's convictions, but vacated the sentence imposed by the District Court and remanded the case for resentencing. (See, App. A).

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[4]During the appellate process, Rice has remained at liberty on bond.

REASONS FOR GRANTING THE WRIT.

1. The Court of Appeals' Decision Creates a Conflict Between State and Federal Law and Raises Serious Questions Regarding State Chartered Savings and Loan Associations.

As far back as 1911, California enacted legislation governing savings and loan associations. The current "Savings and Loan Association Law", (Calif.Fin.C. §§5000-11709), is a comprehensive body of legislation designed to control and regulate the conduct of savings and loan associations operating within California. In charge of the administration and enforcement of this law is the Savings and Loan Commissioner, (Calif.Fin.C. §5250), who may promulgate rules and regulations to carry out the purposes of the savings and loan law, (Calif.Fin.C. §5255).

In 1929, the California legislature, as part of the Savings and Loan Law, created the position of "agent." An "agent" is one who, among other things, may solicit and receive loan applications on behalf of a savings and loan association. (Calif.Fin.C. §5053, App. E). Moreover, the legislature specifically provided that a consultant/agent is *not* an officer, director, or employee of the association. (Calif.Fin.C. §5054, App. F).

This dichotomy between consultant/agents, on the one hand, and officers, directors, and employees, on the other hand, is evident in California's penal statutes regarding receipt of loan procurement commissions. Taken together, California Financial Code §§5605, (App. G), and 5607, (App. H), make it a felony for an officer, director, or employee of an association to receive from *either* the association *or* the potential borrower, a commission or other thing of value in connection with "procuring or endeavoring to procure a loan." Both statutes are silent as to consultant/

agents, however. Since a consultant/agent is not an officer, director, or employee of an association, it follows, *a fortiori*, that the prohibitions of the two statutes regarding receipt of loan procurement commissions do not apply to consultant/agents.

Thus, as part of the regulation and control of its savings and loan associations, the State of California has prohibited certain specific classes of persons who are *connected with* a savings and loan association from receiving loan procurement commissions. Conversely, California has determined that consultant/agents, like Rice, may receive loan procurement commissions.

In reaching its conclusion that §1006 applies to consultant/agents, the Court of Appeals rather cavalierly dismissed California's interests by stating: "Rice was indicted under federal law and California law is irrelevant." (App. A, p. 4).

Consequently, the Court of Appeals' decision places California law and federal law squarely at odds. Clearly, the State of California has an interest in regulating and controlling those savings and loan associations which operate within its boundaries, especially if the association is state-chartered. Similarly, the federal government has an interest in regulating those associations which fall within the protection of FSLIC. Hence, it is not only appropriate, but necessary for this Court to resolve this conflict. See, *Sears, Roebuck & Company v. Stiffel Co.*, 376 U.S. 225, 227-28, 84 S.Ct. 784, 786-87 (1964); and *Kossick v. United Fruit Co.*, 365 U.S. 731, 733, 81 S.Ct. 886, 889 (1961).

2. The Decision of the Court of Appeals Conflicts With Applicable Regulations of the Federal Agency Charged With Regulating the Federal Savings and Loan Insurance Corporation and Its Members.

As discussed earlier, federal jurisdiction was premised on Allstate being a member of FSLIC. The Federal Home Loan Bank Board ("FHLBB") directs FSLIC, (12 U.S.C. §1725), and has promulgated regulations regarding FSLIC, (12 CFR §561, *et seq.*). Allstate, as an "insured institution", (12 CFR §561.1), is subject to the regulations.

In its regulations, FHLBB has provided that "[n]o affiliated person of an insured institution" may receive from "any source" a commission or other thing of value in connection with procuring or attempting to procure a loan from the insured institution. (12 CFR §563.40(a), App. D). The term "affiliated person" is defined very broadly, (12 CFR §561.29, App. C), yet does not cover a consultant/agent, like Rice, who is not an officer, director, or employee of the association.

Hence, FHLBB, the agency charged with administering and implementing federal policy in the savings and loan arena, has decided that consultant/agents may receive loan procurement commissions. Inasmuch as the Court of Appeals' decision directly conflicts with this determination, it is appropriate, and necessary, for this Court to resolve the conflict.

3. In Reaching Its Decision, the Court of Appeals Failed to Follow Principles of Statutory Interpretation Previously Enunciated by This Court.

This is a case of first impression. In all other previous, reported prosecutions under §1006, the defendants have been either officers, directors, or employees of the financial

institution, or have been charged as aiders and abettors of such individuals. This case marks the first time that a defendant has been prosecuted using the statutory language of "connected in any capacity with" a financial institution.

First enacted in 1948, §1006, (App. B), is an amalgamation of numerous previously enacted federal statutes. *Beaudine v. United States*, 368 F.2d 417, 419 (5th Cir. 1966). Although §1006, and its predecessors, has been in existence over four decades, Congress has never attempted to define the meaning of the phrase "connected in any capacity with." Nor, prior to this case, has any court considered the phrase.

Given this lack of prior prosecutions using this phrase from §1006, the lack of any legislative or judicial guidance as to its meaning, and the federal regulations and state law authorizing consultant/agents, like Rice, to receive loan procurement commissions, it was certainly unclear as to whether the provisions of §1006 proscribed conduct which was the basis for convicting Rice. Hence, the Court of Appeals was obligated to consider two long-standing principles of statutory construction in deciding whether §1006 proscribed receipt of loan procurement commissions by consultant/agents, like Rice.

In *Rewis v. United States*, 401 U.S. 808, 812, 91 S.Ct. 1056, 1059 (1971), this Court reaffirmed that "ambiguity concerning the ambit of criminal statutes should be resolved in favor of lenity. *Bell v. United States*, 349 U.S. 81, 83, 75 S.Ct. 620, 99 L.Ed. 905 (1955)." Later that same term, in *United States v. Bass*, 404 U.S. 336, 92 S.Ct. 515 (1971), this Court explained that this long-standing principle of statutory construction "is founded on two policies that have long been part of our tradition." 404 U.S. at 348, 92 S.Ct. at 522.

> "First, 'a fair warning should be given to the world in language that the common world will understand, of what the law intends to do if a certain line is passed. To make the warning fair, so far as possible the line should be clear.' [Cites and footnote omitted]. Second, because of the seriousness of criminal penalties, and because criminal punishment usually represents the moral condemnation of the community, legislatures and not courts should define criminal activity. This policy embodies 'the instinctive distaste against men languishing in prison unless the lawmaker has clearly said they should.' [Cite omitted]." *Id.*

Also in *Bass*, this Court reaffirmed a second principle of statutory construction which is also applicable here:

> "[U]nless Congress conveys its purpose clearly, it will not be deemed to have significantly changed the federal-state balance. Congress has traditionally been reluctant to define, as a federal crime, conduct readily denounced as criminal by the States. This congressional policy is rooted in the same concepts of American federalism that have provided the basis for judge-made doctrines. [Cites and footnote omitted]" 404 U.S. at 349, 92 S.Ct. at 523.

Notwithstanding these principles of statutory construction, the opinion of the Court of Appeals is devoid of any reference or consideration of them. Indeed, the Court of Appeals seems to have rejected the teachings of *Rewis* and *Bass* when it declared: "We construe the statute *broadly* and hold that Rice was 'connected in any capacity with' Allstate. [Emphasis added]" (App. A, p. 4). As a result, the decision should be reviewed by this Court.

Conclusion.

As part of the regulatory scheme for the savings and loan industry within its boundaries, the State of California created the position of "agent" and provided that an individual

acting as a consultant/agent could receive loan procurement commissions from either the association or the potential borrower. At the same time, California determined that officers, directors, and employees of an association should not be permitted to receive loan procurement commissions and made it a felony for them to do so. In a similar vein, the Federal Home Loan Bank Board, the agency charged with representing the federal government in the savings and loan industry, determined that no "affiliated person" should receive a loan procurement commission. Following the same course of California, the FHLBB defined "affiliated person" in such a way as to exempt consultant/agents, thereby permitting consultant/agents to receive loan procurement commissions. Thus, the two entities most concerned with regulating the savings and loan industry within California determined that it was not illegal or inappropriate for consultant/agents to receive loan procurement commissions.

In a matter of first impression, the Ninth Circuit Court of Appeals decided to expand the scope of 18 U.S.C. §1006 and made it illegal for consultant/agents to receive loan procurement commissions. In reaching its conclusion, the Court of Appeals failed to adequately consider California's laws and the FHLBB's regulations, as well as the reasons and rationale underlying both. Moreover, the Court of Appeals ignored long-standing principles of statutory construction previously enunciated by this Court.

Inasmuch as the issue presented in this petition relates to the delicate balance between state and federal regulation of state-chartered savings and loan associations, it is not only appropriate, but necessary, for this Court to resolve the conflict created by the decision of the Court of Appeals.

For the reasons stated above, a writ of certiorari should issue to review the judgment and opinion of the Court of Appeals for the Ninth Circuit.

Dated: July 15, 1981.

Respectfully submitted,

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APPENDIX A.

Court of Appeals' Decision.

United States of America, Appellee, v. Joseph Michael Rice, Jr., Appellant., No. 80-1679.

United States Court of Appeals, Ninth Circuit.

Argued and Submitted April 7, 1981. Decided May 18, 1981.

Defendant was convicted in the United States District Court for the Central District of California, Manuel L. Real, J., on three counts of receiving money or profits through transactions of a federal credit institution with the intent to defraud that institution. Defendant appealed. The Court of Appeals, Gus J. Solomon, Senior District Judge, sitting by designation, held that: (1) for purposes of the statute governing defrauding a federal credit institution, the defendant, who was hired as a consultant for a savings and loan association, was "connected in any capacity with" the savings and loan; (2) error, if any, in restricting the defendant's cross and direct examination was harmless; (3) there was ample evidence in defendant's own testimony to find that he intentionally deceived borrowers; (4) even if the savings and loan association suffered no financial loss as result of the defendant's conduct, the financial institution was defrauded; and (5) the sentence imposed on the defendant which resulted in one and one half years of incarceration, 15 years of probation and 4,500 hours of community service was improper.

Convictions affirmed; remanded for correction of sentence.

Appeal from the United States District Court For the Central District of California.

Before CHOY and NELSON, Circuit Judges, and SOLOMON,* District Judge.

SOLOMON, District Judge:

Joseph Michael Rice, Jr., was convicted on three counts of receiving money or profits through transactions of Allstate Savings and Loan Association (Allstate) with the intent to defraud Allstate. 18 U.S.C. § 1006 (Section 1006).[1] He appeals and we affirm.

Rice worked as a consultant for Allstate from May, 1976 until June, 1978. His written contract with Allstate provided that he would work exclusively for Allstate to originate first mortgage loans on one to four units of existing residential property. Allstate assigned Rice to a specific area; commissions based on the dollar volume of loans he originated were to be his sole compensation. Allstate reserved the right to decide whether to make a loan.

Rice contends that in 1977, he began "working for borrowers to make complex deals lendable" and that he charged the borrowers a fee of 1½% of the loan principal for his extra work.

In August, 1977, Neil Hagerty approached Rice to get Allstate to finance the sale of four condominiums. Rice advised Hagerty to sell each condominium to an individual who would finance the purchase through Allstate and demanded an up-front payment of 1½% of the requested loan

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*Honorable Gus J. Solomon, Senior United States District Judge for the District of Oregon, sitting by designation.

[1]This section provides, in pertinent part: "Whoever, being an officer, agent or employee of or connected in any capacity with . . . any institution the accounts of which are insured by the Federal Savings and Loan Corporation . . . with intent to defraud any such institution . . . participates or shares in or receives directly or indirectly any money, profit, property, or benefits through any transaction, loan, commission, contract, or any other act of any such . . . institution, or association, shall be fined not more than $10,000 or imprisoned not more than five years or both."

principal to "Alltrust." Rice told Hagerty that Alltrust was a division of Allstate Insurance Company and that Alltrust received much of its funds through the insurance company. At Rice's insistence, Hagerty paid the fee with an Allstate cashier's check so that it would be easier to cash.

A few months later, Hagerty approached Rice to get Allstate to finance the construction of an eight-unit condominium project. Rice told Hagerty that the loan could be made but he again required an up-front fee of 1½%.

In the fall of 1977, Joel Berlinsky, a real estate broker, approached Rice to obtain financing for his client from Allstate to purchase a triplex. The transaction consisted of three separate loans with a fee of 1½ points payable to Allstate. Later, Rice told Berlinsky that there would be an extra finance charge of 1½% payable to "Alltrust Department." Berlinsky assumed that Alltrust was affiliated with Allstate. Berlinsky paid the fee but because the loan was never consummated, Rice repaid the finance charge.

In July, 1980, Rice was indicted for the violation of Section 1006.

Rice filed a motion to dismiss in which he challenged the applicability of Section 1006. The district court denied the motion. After a trial, the jury returned a verdict of guilty on all counts.

In this appeal, Rice contends that the district court erred in interpreting Section 1006 to include him as "connected in any capacity with" Allstate. Rice argues that Section 1006 is a typical conflict of interest statute and he could have no conflict of interest because he had no right to approve loans.

This phrase is neither defined by statute nor has any court interpreted it. All of the cases decided under the statute have involved officers and employees or their aiders and abettors.

Rice urges us to seek guidance in interpretation from Federal Home Loan Bank Board regulations which he contends would not prohibit his behavior. We rejected this argument in *United States v. Chenaur*, 552 F.2d 294 (9th Cir. 1977):

> Frankly, we fail to see what Federal Home Loan Bank Board policy has to do with a crime charged under 18 U.S.C. § 1006. Either a crime has been committed under § 1006 or it has not regardless of Federal Home Loan Bank Board policy.
> *Id.* at 298 n. 5.

Rice also refers us to California statutes which prohibit an association's officers and directors from receiving loan procurement fees but permit agents and consultants to receive them. Rice was indicted under federal law and California law is irrelevant.

Because the federal government is extensively involved in the financial markets, Section 1006 was enacted not only to ensure that policy makers will not be influenced by their personal interests but also to keep federally insured lenders free from fraud. *See Beaudine v. United States*, 368 F.2d 417 (5th Cir. 1966). We construe the statute broadly and hold that Rice was "connected in any capacity with" Allstate.

Rice concedes all the elements of Section 1006, except the intent to defraud. He contends that the district court severely restricted his cross and direct examination and that he could not effectively present testimony and documentary evidence on the issue of intent.

We have examined the record and find no error. Many of the questions which Rice contends were improperly rejected had already been asked by his counsel and the other questions were irrelevant.

Rice complains that the district court unduly restricted his testimony on what Hagerty and Berlinsky said when he told them about the extra fee. We think the rulings were correct, but even if there was error, the error was harmless.

Rice testified that he told Hagerty and Berlinsky that an additional fee of 1½% would be required because the deals were large and complicated. He admitted that he did not tell them that the fee was for himself or that the work was beyond the scope of his duties for Allstate. Rice demanded payment to "Alltrust," a fictitious entity that he had invented and Rice refused a check from Berlinsky's client payable to "Allstate Trust Department" because he would have been unable to cash it.

There was ample evidence from Rice's own testimony to find that he intentionally deceived the borrowers and that his defense was not limited by the court's restrictions.

Rice contends that Allstate was not defrauded because it suffered no financial loss as a result of his actions. We rejected a similar argument in *United States v. Chenaur, supra,* when we held that the financial institution need not suffer an economic loss to find a violation of Section 1006. We quoted with approval the following statement from *Beaudine v. United States, supra*:

> The fraud commences with the deceit . . . When there is the purpose to deceive, it matters not whether the objective is to obtain an advantage or to cause the principal to suffer a loss. Either in effect completed the fraudulent purpose.
> *United States v. Chenaur, supra* at 299.

Here, Rice did not report the fees to Allstate and his supervisor had no knowledge of Rice's activities. He kept the fees from Hagerty and he had the use of the funds from the Berlinsky transaction for six months. Rice profited from all three transactions.

The district court imposed consecutive three-year sentences on each count with all but the first six months suspended. The district court also placed Rice on probation for five years on the condition that he devote 1,500 hours to community service. This results in one and one-half years of incarceration, fifteen years of probation and 4,500 hours of community service. This is an improper sentence under 18 U.S.C. § 3651.

The convictions are affirmed but the case is remanded to the district court for correction of the sentence.

APPENDIX B.

18 U.S.C. §1006.

§ 1006. Federal Credit institution entries, reports and transactions.

Whoever, being an officer, agent or employee of or connected in any capacity with the Reconstruction Finance Corporation, Federal Deposit Insurance Corporation, National Credit Union Administration, Home Owners' Loan Corporation, Farm Credit Administration, Department of Housing and Urban Development, Federal Crop Insurance Corporation, Farmers' Home Corporation, the Secretary of Agriculture acting through the Farmers' Home Administration, or any land bank, intermediate credit bank, bank for cooperatives or any lending, mortgage, insurance, credit or savings and loan corporation or association authorized or acting under the laws of the United States or any institution the accounts of which are insured by the Federal Savings and Loan Insurance Corporation, or by the Administrator of the National Credit Union Administration, or any small business investment company, with intent to defraud any such institution or any other company, body politic or corporate, or any individual, or to deceive any officer, auditor, examiner or agent of any such institution or of department or agency of the United States, makes any false entry in any book, report or statement of or to any such institution, or without being duly authorized, draws any order or bill of exchange, makes any acceptance, or issues, puts forth or assigns any note, debenture, bond or other obligation, or draft, bill of exchange, mortgage, judgment, or decree, or, with intent to defraud the United States or any agency thereof, or any corporation, institution, or association referred to in this section, participates or shares in or receives directly or indirectly any money, profit, property, or benefits

through any transaction, loan, commission, contract, or any other act of any such corporation, institution, or association, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

APPENDIX C.

12 CFR §561.29 (41 FR 35821, Aug. 24, 1976).

§ 561.29 Affiliated person.

The term "affiliated person" of an insured institution means the following:

(a) A director, officer, or controlling person of such institution;

(b) A spouse of a director, officer, or controlling person of such institution;

(c) A member of the immediate family of a director, officer, or controlling person of such institution, who has the same home as such person or who is a director or officer of any subsidiary of such institution or of any holding company affiliate of such institution;

(d) Any corporation or organization (other than the insured instituiton or a corporation or organization through which the insured institution operates) of which a director, officer or controlling person of such institution is an officer or partner or is, directly or indirectly either alone or with his spouse, the owner of 10 percent or more of any class of equity securities or the owner with other directors, officers, and controlling persons of such institution and their spouses of 25 percent or more of any class of equity securities; and

(e) Any trust or other estate in which a director, officer, or controlling person of such institution or the spouse of such person has a substantial beneficial interest or as to which such person or his spouse serves as trustee or in a similar fiduciary capacity.

APPENDIX D.

12 CFR §563.40 (41 FR 35822, Aug. 24, 1976).

§563.40 Restrictions on loan procurement fees, kickbacks and unearned fees.

(a) *Loan procurement fees.* No affiliated person of an insured institution may receive, either directly or indirectly, from such institution, any subsidiary thereof, or any other source any fee or other compensation of any kind in connection with the procurement of any loan from such institution or subsidiary thereof.

(b) *Kickbacks and unearned fees.* The prohibitions contained in sections 8(a) and 8(b) of the Real Estate Settlement Procedures Act of 1974 (Pub. L. 93-533) shall apply to any fee, kickback, thing of value, and any portion, split or percentage of any charge, either directly or indirectly, given to or accepted by an insured institution or subsidiary or affiliated person thereof, in connection with any loan on real property made by an insured institution or subsidiary thereof, without regard to whether the loan is within the term "federally related mortgage loan", as defined in section 3(1) of the Act.

APPENDIX E.

California Financial Code §5053 (West, 1968).

§ 5053. Agent.

"Agent" means any person doing any of the following:

(a) Soliciting or receiving applications for loans to be made by an association, where such services are rendered for compensation and as a whole or partial vocation and not casually or intermittently in connection with a general loan brokerage business.

(b) Disbursing funds on behalf of an association on loans, where such services are rendered for compensation and as a whole or partial vocation and not casually or intermittently in connection with a general loan brokerage business.

(c) Representing himself as authorized by an association to solicit or receive applications for loans.

No funds or moneys shall be collected or received on account of shares, stock or investment certificates by an agent or at any agency.

APPENDIX F.

California Financial Code §5054 (West, 1968).

§ 5054. Agent; collector; salesman

"Agent," "collector," and "salesman" do not include an officer, director, or employee of an association, unless he receives special compensation for services rendered as an agent, collector or salesman.

APPENDIX G.

California Financial Code §5605 (West, Supp., 1981).

§ 5605. Receipt of bribe for procuring loan; felony.

Any officer, director or employee of an association who asks, receives, consents, or agrees to receive from a person seeking a loan from the association any commission, emolument, gratuity, or reward or any money, property, or thing of value for his own personal benefit or of personal advantage for procuring or endeavoring to procure for that person a loan from such association is guilty of a felony.

APPENDIX H.

California Financial Code §5607 (West, Supp., 1981).

§ 5607. Compensation based on number of loans made or on interest or fees collected.

No officer, director, or appraiser of an association shall receive from such association, and no association shall pay to any officer, director, or appraiser of such association, any commission, emolument, gratutity or reward based on the volume or number of loans made, or based on the interest or fees collected thereon. Nothing in this section prohibits or limits any of the following:

(a) The receipt or payment of salaries of officers, directors, and appraisers.

(b) The receipt or payment of commissions to agents whether or not based on the volume or number of loans or on the interest or fees collected thereon.

(c) The receipt or payment of bonuses to officers, directors or appraisers if such bonuses are not based on the volume or number of loans made or on the interest or fees collected thereon. If such bonuses are based on the profits of the association for any period, payment thereof shall not be made earlier than 10 days before the expiration of such period and shall be based on the profits of such period or on an estimate thereof made in good faith.